IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA NO.1496 OF 2007

DATE OF DECISION: 22.5.2007

Dalip Singh **...APPELLANT**

VERSUS

Jagdish Singh **...RESPONDENT**

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.Arun Palli, Sr.Advocate with
Mr.Jai Bhagwan, Advocate for the appellant

Permod Kohli (Oral)

This Regular Second Appeal arises out of the judgment and decree dated 4.11.2006 passed by the Civil Judge (Junior Division), Moga decreeing the suit of the respondent/plaintiff for recovery of Rs. 3.00 lacs with interest in respect of an agreement to sell executed between the parties for sale of land. This

judgment and decree was modified by the Additional District Judge, Moga in Civil Appeal No.144 dated 6.12.2006 vide the judgment and decree dated 4.4.2007. The First Appellate Court modified the decree and instead of decreeing the suit for recovery on account of earnest money has decreed the suit for specific performance of contract and directed the present appellant-vendor to execute the sale-deed in respect of the suit property within two months. It is this finding of the First Appellate Court which is assailed before me in this Regular Second Appeal.

The main thrust of the argument of the learned Sr. Counsel for the appellant is that the plaintiff has failed to establish his readiness and willingness to perform his part of the contract. Emphasis is laid on the observations of the trial court wherein the trial court has referred to the statements of PW-3 Shushil Kumar Gupta, Senior Manager, Oriental Bank of Commerce who appeared as a witness on behalf of the plaintiff/respondent to prove the entries contained in the Bank Account of the plaintiff to establish that the plaintiff had the capacity to pay the consideration amount in order to perform his part of the contract. It is contended that the accounts produced by the Bank Manager do not satisfy the requirement of the consideration amount which was required to be paid under the agreement to sell. From the judgments under appeal, it is clear that both the courts below have concurrently held that the plaintiff has proved his readiness and willingness to

perform his part of the contract. The trial court even by returning such a finding exercised his discretion to deny the relief of specific performance of contract and decreed the suit only in respect of recovery of earnest money with interest. From the perusal of the judgment of the trial court, it appears that the trial court has not recorded any reason whatsoever, much less a legal and valid reason, to deny the relief of specific performance of agreement. On the contrary, the First Appellate Court in paragraph 12 of the judgment, discussed the evidence and returned a specific finding regarding the readiness and willingness of the plaintiff to perform his part of the contract. The First Appellate Court has recorded valid reasons and accordingly based on reasoning and materials on record, has modified the decree and granted the relief of specific performance of contract.

Learned Sr. counsel for the appellant has relied on the judgment of the Apex Court rendered in the case of **His Loliness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar, (1996) 4 Supreme Court Cases 526** to canvass that the meanings of "readiness" and "willingness" also include the availability of requisite funds with a person. There is no dispute with this proposition of law. However, it depends upon the facts and circumstances of each and every case. In the present case, the plaintiff has established that he came from abroad to execute the sale deed and pay the consideration amount even before the date

for execution of sale deed was fixed. A legal notice was also served. The plaintiff has approached the Registrar with the money. On the basis of the evidence and materials on record, it is not possible to interfere with the findings of fact recorded by the First Appellate Court. It is also no more res integra that the First Appellate Court is a final court of fact. No substantial question of law is involved in the present appeal.

In view of the above, I find no merit in this appeal which is accordingly dismissed.

(PERMOD KOHLI)
JUDGE

22.5.2007
MFK

NOTE:Whether to be referred to the Reporter or not:YES/NO